

**BOARD OF ENVIRONMENTAL REVIEW
AGENDA ITEM**

EXECUTIVE SUMMARY FOR ACTION ON RULE

Agenda # III.A.3.

Agenda Item Summary: The Department requests that the Board adopt amendments to administrative enforcement and penalty calculation procedures specified in current rules and adopt new rules that describe a standard penalty calculation process that will be used under all environmental laws administered by the Department.

List of Affected Rules: Amend ARM 17.24.132, 17.24.133, 17.24.134, 17.24.136, 17.24.1206, 17.24.1211, 17.24.1218, 17.24.1219, 17.24.1220, 17.56.1014, 17.30.2001, and 17.24.2003, repeal 17.24.1212, 17.30.2005, 17.30.2006, and 17.38.606, and adopt new rules I through VIII.

Affected Parties Summary: The proposed rule amendments and new rules would affect all parties for which the Department calculates and assesses a penalty.

Scope of Proposed Proceeding: The Department requests that the Board adopt the proposed Notice of Amendment, Repeal and Adoption. Because some of the rules amended in the Notice are Department rules, the Notice also serves as a concurrent notice for rules amended under the Underground Storage Tank Act.

Background: A few comments were received on the proposed amendments to the reclamation rules, but the majority of the comments were on the proposed penalty calculation rules. Minor modifications were made to the proposed rules in response to the comments to simplify and clarify the rules. The overall approach to penalty calculations as described in the proposed rules remains the same. A base penalty is calculated based on nature, gravity and extent of the violation. The base penalty is adjusted by circumstances, good faith and cooperation, and amounts voluntarily expended to mitigate the violation and the impacts of the violation. The adjusted base penalty is multiplied by the number of days of violation to obtain a total adjusted penalty. A penalty increase, based on history of violations and economic benefit is added to the total adjusted penalty to obtain a total penalty.

Hearing Information: The Board and Department conducted a public hearing on January 31, 2006. Comments were received from 17 different entities during the public comment period. Summarized comments and responses are included in the proposed Notice of Amendment, Repeal and Adoption.

Board Options: The Board may:

1. Adopt the proposed amendments, repeals and new rules as set forth in the attached draft Notice of Amendment, Repeal and Adoption;
2. Adopt the proposed amendments, repeals and new rules with revisions that the Board finds are appropriate and that are consistent with the scope of the Notice of Public Hearing on Proposed Amendment, Repeal and Adoption and the record in this proceeding; or
3. Determine that amendment, repeal and adoption of the rules is not appropriate and deny the Department's request to adopt rules.

DEQ Recommendation: The Department recommends that the Board adopt the amendments, repeals and new rules as set forth in the attached draft Notice of Amendment, Repeal and Adoption.

Enclosures:

1. Notice of Public Hearing on Proposed Amendment, Repeal and Adoption.
2. Presiding Officer's Report.
3. Draft Notice of Amendment, Repeal and Adoption.
2. Example penalty calculation for proposed new rules.